IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. A.D., J.T. and M.D.,[†] Appellants.	No. 38492-2-II Consolidated with 38543-1-I and 38545-7-II UNPUBLISHED OPINION

Hunt, J. — Three juveniles, AD, JT and MD, appeal their juvenile adjudications that they committed second degree assault. They argue that the State's evidence was insufficient to convict them. We disagree and affirm.

FACTS

I. Assault

On March 11, 2008, minors MD, aged 17, and JT, aged 14, were standing in the street with AD, aged 16, when AD approached JC and TH riding their bikes. AD called JC a "faggot," forced him off his bike into some bushes, and punched him repeatedly. TH attempted to intervene, but either MD or JT pulled him into the bushes.

Driving down the street, James Edington witnessed the attack, honked his horn, stopped and exited his truck, told the boys he was going to call the police, used his camera phone to take a picture of the boys, and tried to assist one of the victims. Edington noticed that his camera phone was missing, believed that one of the boys had taken it, followed the boys into Orchard Park, and

[†] This court has determined pursuant to RAP 3.4 that the name of the juvenile involved will not be used in the case caption or the body of this opinion.

asked them for his phone back.

AD tackled Edington; JT and MD punched and kicked Edington in the torso and head. Edington did not fight back. The incident lasted less than one minute. Edington's injuries included a nasal fracture, four rib fractures, and lacerations above his eye and above his lip. He spent two days in the hospital, was on bed rest for nearly three weeks, and was unable to return to work for a month.

II. Procedure

The State charged AD, JT, and MD with second degree assault of Edington. The State charged AD with fourth degree assault of JC and charged JT and MD as accomplices.

The juvenile court rejected the boys' claim of self defense and defense of others, adjudicated that AD, JT, and MD had committed second degree assault against Edington, and adjudicated that AD had committed fourth degree assault against J.C. The court dismissed the accomplice charges against JT and MD based on insufficient evidence. The court sentenced AD, JT, and MD to 15-36 weeks of confinement. It sentenced AD to 24 hours of community service.

AD, JT, and MD appeal their second degree assault adjudications.[1]

ANALYSIS

AD, JT, and MD argue that the evidence was insufficient to sustain their second degree assault adjudications because the State failed to prove the element of recklessness beyond a reasonable doubt. We disagree.

I. Standard of Review

In reviewing a claim of insufficient evidence, we examine the evidence in the light most

[1] AD does not appeal his fourth degree assault adjudication. The State does not cross appeal dismissal of the accomplice charges.

favorable to the State; we reverse only where no rational trier of fact could find that all elements of the crime were proved beyond a reasonable doubt. *State v. Montgomery*, 163 Wn.2d 577, 586, 183 P.3d 267 (2008) (citing *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980)). A claim of insufficiency admits the truth of the State's evidence and all reasonably drawn inferences. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385 (1980). *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

We defer to the trier of fact to resolve conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. *State v. Hernandez,* 85 Wn. App. 672, 675, 935 P.2d 623 (1997). Circumstantial evidence is accorded equal weight as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

We review findings of fact in a juvenile matter for substantial evidence. *State v. B.J.S.*, 140 Wn. App. 91, 97, 169 P.3d 34 (2007); *State v. Alvarez*, 105 Wn. App. 215, 220, 19 P.3d 485 (2001). "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding." *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006) (citations omitted). Findings of fact must support conclusions of law. *B.J.S.*, 140 Wn. App. at 97. Unchallenged findings of fact are verities on appeal. *Levy*, 156 Wn.2d at 733.

The defendants do not assign error to any findings of fact or conclusions of law. Accordingly, we limit our analysis to whether the findings of fact support the trial court's conclusions of law.

II. Recklessness

Second degree assault requires an intentional assault on another that recklessly inflicts substantial bodily harm. RCW 9A.36.021(a). The defendants concede that they inflicted

"substantial bodily harm" on Edington. And they do not argue that the assault was unintentional. Instead, they contend only that the evidence was insufficient to prove that their conduct in attacking Edington was reckless. We hold that the evidence supports the recklessness element.

A. Knowledge and Disregard of Risk

To prove recklessness, the State must show that (1) the defendants knew and disregarded a substantial risk that a wrongful act might occur, and (2) their disregard of such substantial risk was a gross deviation from the conduct of a reasonable person in that situation. RCW 9A.08.010(c). Recklessness, therefore, includes both subjective and objective knowledge. *State v. R.H.S.*, 94 Wn. App. 844, 974 P. 2d 1253 (1999).

1. Knowledge of Substantial Risk of Harm

The trier of fact may find subjective knowledge if there is sufficient information that would lead a reasonable person to believe that a fact exists. *R.H.S.*, 94 Wn. App. 844 (citing *State v. Johnson*, 119 Wn. 2d 167, 174, 829 P.2d 1082 (1992)). Where the defendant is a juvenile, we consider how a reasonable child of that age would act in that situation. *State v. Marshall*, 39 Wn. App. 180, 183, 692 P.2d 855 (1984)).

The trial court found that (1) the defendants used "excessive force" against Edington; (2) AD initiated the fight against Edington; (3) all three defendants hit and kicked Edington while he was on the ground; and (4) Edington did not fight back. AD testified that he knew punching someone repeatedly could cause injury, resulting in broken bones if hit hard enough. Based on their ages and AD's testimony, the court could reasonably infer that JT and MD also subjectively knew that repeatedly punching and kicking a person could result in substantial bodily harm, regardless of whether they had previous involvement in a fight.

Thus, the evidence was sufficient to support the trial court's conclusions of law 2 and 3 that the defendants had subjective knowledge that their conduct created a substantial risk that Edington would sustain substantial bodily harm.

2. Gross Deviation from Reasonable Teenager's Conduct

The "gross deviation" element of recklessness focuses on what a reasonable person would have known, *R.H.S.*, 94 Wn. App. at 847, and, here, on how a child of that age would have acted in that situation. *Marshall*, 39 Wn. App. at 183. The trial court weighed the credibility of the witnesses, including the defendants' testimonies. The trial court obviously found incredible the defendants' contention that they had attacked Edington because they feared being pursued by a physically larger adult. Thus, the trial court determined that the defendants did not act in self-defense or in defense of others.

Instead, the trial court found that

> Mr. Edington went into the park with the intention of getting his cell phone; that he walked up to these boys, and that rather than being afraid, that AD began a fight with him by grabbing him. Instead of saying 'I don't have your cell phone,' . . . he started the fight with Mr. Edington.

Report of Proceedings at 195. Again, Edington did not fight back, and, unlike Edington the three defendants sustained no injuries.

The trial court appropriately inferred that a reasonable teenager neither initiates unprovoked attacks nor uses excessive force where substantial harm, like the harm they inflicted on Edington, is foreseeable. *See Theroff*, 25 Wn. App. 593; *Salinas*, 119 Wn.2d at 201. Thus, the evidence was sufficient to establish that the defendants' disregard of the substantial risk of harm to Edington was a gross deviation from the conduct of a reasonable teenager in that situation. RCW 9A.08.010(1)(c). Looking at the evidence in the light most favorable to the State post-conviction, as we must, we hold that it supports the trial court's finding of recklessness.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Houghton, P.J.

Quinn-Brintnall, J.